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Integretel

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE BILLING RESOURCE, dba
Integretel, a California corporation,

Debtor-Plaintiff-Appellee

v.

FEDERAL TRADE COMMISSION, et al.

Defendant-Appellant

Case No. 07-CIV-5758-JW

DATE: February 4, 2008
TIME: 9:00 a.m.
Place: 280 S. First Street
San Jose, CA
Judge: Hon. James Ware
Courtroom 8- 4th Floor

On Appeal from the United States Bankruptcy Court for the Northern District of
California,
No. 07-52890-ASW, Adversary Proceeding No. 07-5156

**PLAINTIFF-APPELLEE THE BILLING RESOURCE, dba INTEGRETEL's
NOTICE OF RECENT DEVELOPMENTS PERTINENT TO FTC's MOTION FOR
STAY PENDING APPEAL:**

- (1) INTEGRETEL's FILING OF ITS PLAN OF REORGANIZATION AND
RELATED DISCLOSURE STATEMENT IN ITS BANKRUPTCY CASE**
- (2) THE FEBRUARY 20, 2008 HEARING REGARDING APPROVAL OF
DISCLOSURE STATEMENT IN THE BANKRUPTCY CASE,**
- (3) ORDER OF FLORIDA DISTRICT COURT RE TRIAL OF FTC
ENFORCEMENT ACTION, AND**
- (4) FILING OF AMENDED COMPLAINT IN ADVERSARY PROCEEDING**

1 The Billing Resource d/b/a Integretel ("Integretel") files this Notice to apprise the
2 Court regarding recent developments that are pertinent to the pending motions for stay
3 pending appeal brought by the Federal Trade Commission ("FTC"). These developments
4 include the progress of Integretel's bankruptcy reorganization and the status of the action
5 brought by the Federal Trade Commission ("FTC") against Integretel and other defendants
6 in the U.S. District Court for the Southern District of Florida (the "Florida Action"). As
7 discussed below, Integretel filed on January 14, 2008 its plan of reorganization and related
8 disclosure statement in the bankruptcy case. On February 20, 2008, the bankruptcy court
9 will hold a hearing to consider approving the disclosure statement, as well as scheduling a
10 hearing to consider confirmation of Integretel's plan of reorganization.¹

11 Integretel also files this Notice in order to advise the Court of the present trial status
12 of the Florida Action. Based on a pending settlement reached by the FTC with the other
13 billing aggregators named as defendants, the trial date in the Florida Action case as to
14 those parties has been stayed. The FTC's motion for summary judgment against the
15 remaining individual defendants remains pending and, if granted by the Florida Court,
16 would leave no claims remaining to be tried other than those asserted against Integretel.

17 Finally, this Notice provides the Court with the amended complaint filed by
18 Integretel in the bankruptcy adversary proceeding, which now includes a claim for
19 determination of any interest that the Receiver or the FTC has in Integretel's assets.

20 **BRIEF SUMMARY OF PROCEDURAL AND FACTUAL BACKGROUND**

21 Integretel filed a voluntary petition under chapter 11 of title 11 of the United States
22 Code on September 16, 2007 (the "Petition Date") in the United States Bankruptcy Court
23 for the Northern District of California, San Jose Division (the "Bankruptcy Court")
24 commencing bankruptcy case number 07-52890 in the Bankruptcy Court (the "Bankruptcy
25 Case").

26
27 ¹ This Notice is supported by the Declaration of Steven B. Sacks, filed herewith (the
28 "Sacks Declaration").

1 On September 19, 2007, Integretel commenced adversary proceeding number 07-
2 5156 (the "Adversary Proceeding") in the Bankruptcy Court against the Federal Trade
3 Commission (the "FTC") and a receiver who had been appointed for two of Integretel's
4 prior customers (the "Receiver"). The FTC filed a notice of appeal to this Court from an
5 order the Bankruptcy Court issued in the Adversary Proceeding on or about November 7,
6 2007 (the "First FTC Appeal"). The First FTC Appeal commenced the above-captioned
7 case before this Court. Subsequently, the FTC filed a notice of appeal to a separate order
8 the Bankruptcy Court issued in the Adversary Proceeding on or about November 27, 2007
9 (the "Second FTC Appeal"). The Second FTC Appeal was docketed with the First FTC
10 Appeal under the above-captioned case number for consideration by this Court.

11 On January 3, 2008, this Court granted the FTC's motion for expedited
12 consideration (DE 30) of its combined motion for stay pending appeal and motion for
13 change of venue with regard to the First FTC Appeal (DE 3) and set them for hearing on
14 February 4, 2008. (DE 41). The FTC contends that the FTC's motion for stay pending
15 appeal in the Second FTC Appeal (DE 13) is also being heard on February 4, 2008.
16 Integretel disagrees.

17 **INTEGRETEL'S FILING OF ITS PLAN OF REORGANIZATION AND**
18 **CONTINUED PURSUIT OF CONFIRMATION OF ITS PLAN**

19 Integretel has continued to pursue a plan of reorganization which addresses and
20 resolves all of Integretel's alleged liability arising from Integretel's actions and/or inactions
21 prior to the Petition Date. On January 14, 2008, Integretel filed in the Bankruptcy Case its
22 "Debtor's Chapter 11 Plan Of Reorganization, Dated January 14, 2008" (DE 395 in the
23 Bankruptcy Case) (as such plan may be further modified, revised or amended the "Plan of
24 Reorganization") and an accompanying disclosure statement in support of the Plan of
25 Reorganization (DE 396 in the Bankruptcy Case). On January 18, 2008, Integretel filed in
26 the Bankruptcy Case its "First Amended Disclosure Statement For The Debtor's Chapter
27 11 Plan Of Reorganization, Dated January 14, 2008" (DE 403 in the Bankruptcy Case) (as
28 such disclosure statement may be further modified, revised or amended the "Disclosure

1 Statement"). A hearing is scheduled in the Bankruptcy Case for February 20, 2008 at 2:15
2 p.m. at which time the Bankruptcy Court will consider approving the Disclosure
3 Statement, as well as setting a hearing to consider confirmation of Integretel's Plan of
4 Reorganization. See, e.g., "Notice Of Hearing On Disclosure Statement" regarding the
5 February 20, 2008 hearing in the Bankruptcy Case (DE 402 in the Bankruptcy Case), a
6 copy of which notice is attached as Exhibit A to the accompanying Sacks Declaration.

7 The Plan of Reorganization provides a comprehensive framework for addressing
8 and resolving all of Integretel's alleged liability arising from Integretel's actions and/or
9 inactions prior to the Petition Date – whether such liability is alleged by the FTC, the
10 Receiver, or the hundreds of other customers, vendors or taxing authorities which have or
11 may allege liability against Integretel. In less than one month, on February 20, 2008, the
12 Bankruptcy Court will consider approval of the Disclosure Statement related to the Plan of
13 Reorganization. At that same February 20, 2008 hearing, the Bankruptcy Court will also
14 consider setting a confirmation hearing for Integretel's Plan of Reorganization. Integretel
15 continues its efforts in the Bankruptcy Case to reorganize its pre-petition liabilities – as to
16 all entities alleging pre-petition liability against Integretel – and Integretel should be
17 permitted to continue its reorganization efforts in that centralized forum.

18 **PENDING SETTLEMENT AND VACATED TRIAL DATE AS TO**
19 **INTEGRETEL'S CO-DEFENDANTS IN FLORIDA ACTION**

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21 On January 23, 2008, the other billing aggregators named as defendants in the
22 Florida Action filed a joint motion with the FTC to stay the trial date and pretrial deadlines
23 in that case based upon their representation to the Court that they had reached a tentative
24 settlement that will be considered by the FTC's commissioners for approval. See Sacks
25 Declaration, Exhibit B. On January 25, 2008, the Florida Court issued an order granting
26 that motion. See Sacks Declaration, Exhibit C.

1 The joint motion advised the Florida Court that the FTC's summary judgment
2 motion remained pending against the three individual defendants and that the FTC was not
3 seeking a change in the trial date as to these defendants.

4 **AMENDED COMPLAINT FILED IN ADVERSARY PROCEEDING**

5 On December 21, 2007, the Bankruptcy Court entered its order granting Integretel's
6 motion for leave to file an amended complaint in which it adds a claim for relief seeking a
7 determination that Integretel's bank accounts and other assets are free of any interest that
8 the Receiver and the FTC assert was held by the Receiver as a consequence of the Florida
9 Action. On December 27, 2007, Integretel filed its amended complaint. See Sacks
10 Declaration, Exhibit D. Integretel asserts that the adversary proceeding thus provides a
11 forum for the final determination of the Receiver's claim that he had a property interest in
12 monies held by Integretel following the filing of Integretel's bankruptcy case.

13 Dated: January 28, 2008

14 Respectfully submitted,

15 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
16

17 By /s/ Steven B. Sacks
18 STEVEN B. SACKS
19 Attorneys for Debtor/Plaintiff/Appellee
20 THE BILLING RESOURCE, dba INTEGRETTEL
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